

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA

ESMID REYES RAMIREZ,	)	No. CV-F-04-6298 OWW
	)	(No. CR-F-03-5010 OWW
)	
Petitioner,	)	MEMORANDUM DECISION AND
	)	ORDER DENYING PETITIONER'S
vs.	)	MOTION TO VACATE, SET ASIDE
	)	OR CORRECT SENTENCE PURSUANT
	)	TO 28 U.S.C. § 2255 AND
UNITED STATES OF AMERICA,	)	DIRECTING CLERK OF COURT TO
	)	ENTER JUDGMENT FOR
	)	RESPONDENT
Respondent.)	
)	
)	

On September 22, 2004, Petitioner Esmid Reyes Ramirez timely filed a motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

Petitioner's motion is DENIED. Petitioner's motion is based on the retroactive application of *United States v. Booker*, 543 U.S. 200 (2005) and *Blakely v. Washington*, 542 U.S. 296 (2004). Petitioner is not entitled to relief on this ground. *Booker* and *Blakely* are not retroactive on collateral review. *United States v. Cruz*, 423 F.3d 1119 (9th Cir.2005), cert.

1 *denied*, 546 U.S. 1155 (2006); *Schardt v. Payne*, 414 F.3d 1025
2 (9th Cir.2005).¹

3 For the reasons stated:

4 1. Petitioner's motion to vacate, set aside or correct
5 sentence pursuant to 28 U.S.C. § 2255 is DENIED;

6 2. The Clerk of the Court is directed to enter Judgment for
7 Respondent.

8 IT IS SO ORDERED.

9 Dated: May 22, 2008

/s/ Oliver W. Wanger
UNITED STATES DISTRICT JUDGE

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25 ¹This conclusion makes unnecessary any discussion of the
26 validity of Petitioner's waiver in the written Plea Agreement of
the right to bring a Section 2255 motion.